



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 9948368

Date: FEB. 26, 2021

**Appeal of Nebraska Service Center Decision**

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an entrepreneur, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center approved the immigrant petition, but subsequently issued a notice of intent to revoke (NOIR) and later revoked the approval of the petition, concluding that U.S. Citizenship and Immigration Services (USCIS) had approved the petition in error. Specifically, the Director determined that although the Petitioner qualified for classification as a member of the professions holding an advanced degree, he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

The Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition . . . ." Section 205 of the Act, 8 U.S.C. § 1155. By regulation this revocation authority is delegated to any USCIS officer who is authorized to approve an immigrant visa petition. 8 C.F.R. § 205.2(a). USCIS must give the petitioner notice of its intent to revoke the prior approval of the petition and the opportunity to submit evidence in opposition thereto, before proceeding with written notice of revocation. *See* 8 C.F.R. § 205.2(b) and (c). The Board of Immigration Appeals has discussed revocations on notice as follows:

[A] notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if

unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.<sup>1</sup>

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).<sup>2</sup> *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>3</sup>, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign

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<sup>1</sup> *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)). Upon the proper issuance of a notice of intent to revoke for good and sufficient cause, the petitioner bears the burden of proving eligibility the requested immigration benefit. *Id.* at 589.

<sup>2</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

<sup>3</sup> See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>4</sup>

## II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

### A. Substantial Merit and National Importance of the Proposed Endeavor

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner initially indicated that he intended to work as an "entrepreneur" involved in "real estate, investments, tax estate planning, and wealth transfer." He asserted that his "primary focus is researching investment opportunities, clearing the title, and the hiring/managing of the lawyer, certified public accountant (CPA), and property manager." The Director's NOIR requested further clarification of his proposed endeavor and evidence of its national importance.

In response, the Petitioner reiterated that he planned to be "an entrepreneur in the U.S." and that his proposed endeavor involved "growing my real estate company [redacted] and providing

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<sup>4</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

consulting services to U.S. companies, institutions, and individuals in need of expert advice in business, legal compliance, and business expansion.” He further stated:

Since November of 2016, I have been a partner of [redacted] leading the business management and operations of the U.S.-based real estate investment company.<sup>5</sup> To note [redacted] identifies opportunities for real estate investments, by recognizing each property’s value and is idealized to provide turnkey solutions through defined processes for outside investors, providing customized service to ensure that investors investments in American real estate properties are safeguarded an well managed. My expertise lies in how I execute and manage our clients’ assets to maximize their investment. Currently, I manage a well-diversified portfolio of homes within the United States, by reducing our investors’ exposure to liabilities and risks resulting in property ownership.

The Petitioner’s response to the NOIR included information about opportunities in the real estate investment industry, real estate as a source of wealth, U.S. home values, projections for the U.S. housing market, our country’s shortage of affordable housing, immigrant entrepreneurs’ pivotal role in the U.S. economy, foreign-born entrepreneurship as an engine for job creation, and the economic effect of high-growth startups. In addition, the Petitioner provided articles discussing housing’s connection to economic growth, the economic benefits associated with immigrants, the entrepreneurial legacy of immigrants and their children, immigrants’ contribution to U.S. entrepreneurship, the value of entrepreneurs to the global economy, the benefits of international investment, entrepreneurs as drivers of economic development, and small companies’ role as job creators. He also submitted information about housing’s contribution to gross domestic product, the value of entrepreneurship to the U.S. economy, the economic contribution of immigrant-launched businesses, immigrant entrepreneurship as a driver of U.S. economic growth, the benefit of foreign direct investment to the U.S. economy, immigration as an entrepreneurial resource, and the effect of small business on our country’s economy.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

In response to the NOIR, the Petitioner argued that his proposed endeavor stands “to attract more investments in the real estate sector, consequently, increasing the number of real estate developments, which are responsible for a significant amount of jobs and revenues to the economy.” He claimed that his proposed work in the U.S. real estate market will serve “nation-wide concerns, such as the current

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<sup>5</sup> As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about this position to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

shortage of housing.” In addition, the Petitioner asserted that “[h]is proposed endeavor will . . . bring substantial foreign investment activities to the nation, as [redacted] is a key investor within the nation’s real estate sector.” He also stated that his undertaking involves advising “foreign entities on how to invest within the U.S. real estate market, thus revitalizing both the nation’s real estate sector and foreign investment activities, and, on a bigger spectrum, the national economy.” Furthermore, the Petitioner stated that his undertaking stands to “incentivize the local and national economy by 1) employing and paying U.S. employees, and 2) by supporting local subcontractors.”

In the decision revoking the approval of the petition, the Director concluded that the Petitioner’s proposed work has both substantial merit and national importance. For the reasons discussed below, we withdraw the Director’s determination that the Petitioner has demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his particular undertaking. Although the Petitioner’s statements reflect his intention to expand his company, provide business consulting services, and manage his clients’ real estate investments, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact the U.S. economy or real estate industry more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, he has not shown that his company’s level of real estate investment and consulting activity stand to provide substantial economic benefits in Tennessee or the United States.<sup>6</sup> Without sufficient information or evidence regarding any projected U.S. economic impact attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner’s real estate investment and consulting projects would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework, and we withdraw the Director’s determination on this issue.

## B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes documentation of his résumé, academic credentials, membership in the [redacted] Bar Association, production engineering registration, accounting technician registration, and [redacted] individual income tax returns. He also offered a statement detailing his future plans and letters of support discussing his work experience.

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<sup>6</sup> For example, the Petitioner has not demonstrated that that his undertaking would offer the Tennessee region or its population a substantial economic benefit through employment levels or foreign direct investment.

With regard to the Petitioner's work experience at the [redacted] from 2001 until 2003, [redacted] Director of the Department of Information and Energy Studies at [redacted] stated that the Petitioner demonstrated his "skill in quantitative methods, legal and economic knowledge, mainly in the calculation of prices of new projects of the most relevant energy sources in the country." [redacted] further indicated that the Petitioner worked on a managerial agreement between the [redacted] and the National Electric Energy Agency, and served for the National Committee for [redacted] Nuclear Program. [redacted] also noted that the Petitioner worked as an economic analyst for the [redacted] (2003-2005) and was responsible for "coordinating infrastructure, taking care of macroeconomic and microeconomic analyses of the electricity sector, foreign trade, logistics and defense of competition."

Regarding the Petitioner's temporary mission (2005) at the Ministry of Planning, [redacted] a former deputy secretary at the Ministry of Planning, asserted that the Petitioner "assisted in the implementation of a centralized day-pass and ticket management information system." [redacted] further indicated that the Petitioner "mapped the most critical implementation processes, develop training not only for the officers of the agencies, but also for the operators of the system at its various levels, and also wrote a manual for training of operators."

In addition, [redacted] Director of the Center for [redacted] [redacted], discussed the Petitioner's work experience as a legal and economic advisor at [redacted] from 2005 until 2018. [redacted] explained that the Petitioner's work involved strategic planning, ensuring correct allocation of resources, preservation of popular [redacted] cultures, project management, and designing a program to "market products under the seal of the Ministry of Culture."

Furthermore, the record includes a June 2017 "Proof of Enrollment and Registration Status" for [redacted] a "Private Agreement of the Constitution of the Company," a contractual amendment for the company (January 2018), and a "Foreign Exchange Contract" (January 2018).<sup>7</sup> This documentation identifies the Petitioner and four others as partners in [redacted], but the record does not include evidence of this [redacted] company's business transactions or tax returns.

The Director's NOIR acknowledged the Petitioner's "experience as a [redacted] government employee," but noted that he intended to work as an entrepreneur in the United States. The NOIR indicated that while "the Petitioner is a partner of a [redacted] company that has been in business since 2017," his limited amount of experience as a partner was not sufficient to establish a record of success in business or that he is otherwise well positioned to advance his proposed endeavor.<sup>8</sup> The NOIR further advised the Petitioner of the types of evidence USCIS considers in determining eligibility under *Dhanasar*'s second prong.

In response, the Petitioner submitted a "Professional Plan and Statement" discussing his government experience with [redacted] the Ministry of Planning, and [redacted] He also indicated that he was a partner

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<sup>7</sup> The "Proof of Enrollment and Registration Status" document lists the company's activities as "rent or own properties" and "purchase and sale" of properties.

<sup>8</sup> [redacted] was registered in June 2017, and the Petitioner filed his immigrant petition in May 2018. Accordingly, the record indicates that he had less than one year of business experience as a partner with the company at the time of filing. See 8 C.F.R. § 103.2(b)(1).

with [REDACTED] [REDACTED] and [REDACTED]  
[REDACTED], but the record did not include evidence of his business experience with the latter two companies.

In the decision revoking the approval of the petition, the Director concluded that the Petitioner's education and work experience were insufficient to render him well positioned to advance his proposed endeavor. With respect to the Petitioner's proposed endeavor to expand his U.S. company, [REDACTED]  
[REDACTED] the Director noted that the Petitioner had not offered documentation relating to this company's operations. The Director's decision further stated:

While the petitioner has stated his plan is to grow his real estate company and provide consulting services to U.S. companies, institutions, and individuals in need of expert advice in business, legal compliance and business expansion, no evidence was provided to suggest that he has made any progress towards achieving this goal, or to support that he has any interest from potential customers, users, investors, or other relevant entities or individuals.

On appeal, the Petitioner provides documentation of the legal existence of [REDACTED] its business activities, and letters from three potential business partners. As noted, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988).

Nevertheless, for the reasons set forth below, this new evidence and the documentation previously submitted are not sufficient to demonstrate that the Petitioner is well positioned to advance the proposed endeavor. The appellate submission includes a September 2016 operating agreement for [REDACTED] the company's "Certificate of Filing" and "Certificate of Formation" with the State of Texas, a letter from the Internal Revenue Service assigning the company an Employer Identification Number, and an "Amended and Restated Operating Agreement." The Petitioner also presents residential lease agreements for properties at [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

Additionally, the Petitioner submits three letters from business contacts in [REDACTED] and the United States. The first letter is from a [REDACTED] lawyer who states that the Petitioner "referred my services to one of his church friends that lives in the U.S." and who expresses interest a partnership for real estate investments. The second letter is from a real estate investor who asserts that the Petitioner helped him "handle and sell" two properties in the [REDACTED] area. The third letter is from a gutter services company manager in Florida who contends that he and the Petitioner discussed merging their real estate investment operations.

While the Petitioner's documentation shows his involvement with six rental properties and includes letters from a few potential business partners, the record does not reflect sufficient interest from potential customers, users, investors, or other relevant entities or individuals to demonstrate that the Petitioner is well positioned to advance his company's real estate operations. Nor does the evidence show that the Petitioner's past experience in government and business, track record of running a real

estate investment company, plan for future activities, and progress towards achieving his company's goals rise to the level of rendering him well positioned to advance the proposed endeavor.<sup>9</sup>

Further, as it relates to the Petitioner's education, while his Master of Science degree in Economics (2008) renders him eligible for the underlying EB-2 visa classification, he has not shown that his academic accomplishments by themselves are sufficient to demonstrate that he is well positioned to advance his proposed endeavor.<sup>10</sup> In *Dhanasar*, the record established that the petitioner held multiple graduate degrees including "two master of science degrees, in mechanical engineering and applied physics, as well as a Ph.D. in engineering." *Id.* at 891. We look to a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor and education is merely one factor among many that may contribute to such a finding.

Finally, regarding the Petitioner's membership in the [REDACTED] Bar Association, production engineering registration, and accounting technician registration, he has not demonstrated that the aforementioned membership and registrations are an indication that he is well positioned to advance his advance his company's real estate operations in Tennessee or elsewhere in the United States. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework.

### C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that he is eligible for a waiver due to the impracticality of labor certification, "the potential creation of jobs and increase of revenue," and the importance of immigrant entrepreneurship. However, as the Petitioner has not established the national importance of his proposed endeavor and that he is well positioned to advance that endeavor as required by the first and second prongs of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

## III. CONCLUSION

As the Petitioner has not met the requisite first and second prongs of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The revocation of the previously approved petition is affirmed for the above stated reasons, with each considered as an independent and alternative basis for the decision.

**ORDER:** The appeal is dismissed.

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<sup>9</sup> For instance, the Petitioner did not provide tax returns or audited financial statements for any of his companies as evidence of his progress in the proposed endeavor or record of success in business.

<sup>10</sup> The Petitioner has also received a Bachelor of Science degree in Industrial Engineering (1999) and a Bachelor of Science degree in Law (2012).